



CITY OF SAINT PAUL
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TO: Neighborhood Planning Committee
FROM: Patricia James *PJ*
DATE: August 29, 2011

RE: Nonconforming Use Text Amendments – August Update

Update

The attached set of amendments incorporates the changes requested by the Neighborhood Planning Committee through the discussion ending point on August 10, 2011 (on page 5).

The committee meeting ended with a discussion about a proposed amendment to Sec. 62.106(h), which would permit legal nonconforming residential buildings to be reestablished at the number of units they had when constructed, or the number of units of a later conversion, if fewer. At the request of the committee, a table showing all of the applications to reestablish nonconforming residential uses is attached. The table starts with a case from 2008, which is when the Department of Safety and Inspections changed their policy regarding the reestablishing of a nonconforming number of residential units in a building. The table shows that, with the exception of two cases, there would be no difference in the ultimate decision reached using either the existing public hearing and petition process or the proposed administrative process. The two cases where a duplex could have been administratively approved (the records show original construction as a duplex) but the nonconforming use permit was denied are 1784 Lafond and 1648 Bush.

1784 Lafond was denied reestablishment of the duplex by the City Council based on a possible past use as a single family home. County Assessor records indicate that the building was, in fact, constructed as a duplex, so under the proposed amendment the duplex could have been administratively approved unless there was clear evidence that the duplex had been converted to a single family home for a period of time after its original construction. This case would have required additional research by staff in the Department of Safety and Inspections, and if they were able to determine that the use had been single family at some point, the permit would have required planning commission review using the existing process. The City Council resolution of denial is attached to this memo.

1684 Bush was constructed as a duplex. It appears that one of the major reasons the permit was denied was that the pro forma did not conclusively show that it was impractical to convert the structure to single family. Under the proposed amendment, cost of deconversion would not be a part of the determination to approve reestablishment of the duplex use, and the duplex would likely have been administratively approved. The staff report and Planning Commission resolution are attached.

Finally, the proposed changes to Chapter 64 regarding nonconforming signs have also been updated and are included in the amendment draft.

Background

In 2004 and 2005 the Minnesota Legislature adopted changes to Minnesota Statutes (Sec. 462.357) regarding nonconforming uses. Local zoning provisions for continuation of structures and uses made nonconforming by adoption of an additional zoning control are governed by, and must be consistent with, the provisions in Minnesota Statutes Sec. 462.357 for such legal nonconforming uses. Minnesota Statutes sec. 642.357, Subd. 1e, specifically allows legal nonconforming uses to 'be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless: (1) the nonconformity or occupancy is discontinued for a period of more than one year; or (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property was damaged."

Because the language in Saint Paul's zoning code differs from the statute, the zoning code must be updated. The nonconforming use text amendments zoning study proposes revisions to Chapter 62 Nonconforming Uses and Chapter 64 Signs of the zoning code to reflect the statutory changes.

In reviewing Chapter 62, staff also determined that some of the language could be made clearer. In addition, the zoning study provides an opportunity to incorporate some zoning administrator interpretations into the text of the code.

Internal staff discussions also raised questions about the requirement for consent petitions for some of the nonconforming use permits. Obtaining consent signatures is becoming more difficult, especially since many properties are owned by financial institutions in other states. Since the petition requirement is a prerequisite to applying for these nonconforming use permits, those wishing to rehabilitate properties are prevented from being able to make their case at a public hearing because they are not able to obtain a sufficient number of signatures.

Finally, the special sign district plans in Chapter 64 also needed amendment to reflect the new statutes. Since much of the language regarding nonconforming signs is repetitive, staff also took this opportunity to update these sections as well.

Staff Recommendation

Staff recommends review, discussion, and eventual approval of the proposed nonconforming use text amendments attached to this report.

Nonconforming Use Zoning Code Text Amendments

Sec. 60.215. - N.

~~*Nonconforming building.* A lawful building existing on the effective date of adoption (October 24, 1975) or amendment of this code but that does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, or spacing requirements from another use, off street parking and loading requirements, or other regulations of the district in which it is located.~~

~~*Nonconforming use.* A lawful use existing on the effective date of adoption (October 24, 1975) or amendment of this code but that is not now permitted in the district in which it is located.~~

[These terms are more properly defined in Chapter 62, the chapter on nonconforming uses, and there is no need to repeat the definitions here.]

Chapter 62. Zoning Code – Nonconforming Lots, Uses and Structures

Sec. 62.101. Intent.

There exist within the districts established by this code and subsequent amendments lots, structures, and uses of land and structures that were lawful before this code was passed or amended that would be prohibited, regulated or restricted under the terms of this code or future amendments. It is the intent of this code to permit legal nonconforming lots, structures or uses to continue until they are removed and not replaced in accordance with Minnesota Statutes, section 462.357, subdivision 1e.

The code recognizes that in some circumstances allowing nonconforming uses to be changed to similar or less intense nonconforming uses, or allowing nonconforming uses to be reestablished in vacant buildings may benefit the city and surrounding neighborhood. Some buildings have a long useful life and allowing their continued occupancy for nonconforming uses can be more desirable than requiring them to be vacant if they cannot be converted to conforming uses. Consequently, the code allows conversion of nonconforming uses to similar nonconforming uses and allows the planning commission to reestablish nonconforming uses in vacant buildings if regulated so as to be compatible with the surrounding neighborhood.

~~The code recognizes provides, under limited circumstances, for that enlargements expansions or relocations of nonconforming uses which improve the appearance and functioning of the use can benefit the surrounding neighborhood. The code allows the enlargement of nonconforming uses when found to be compatible with the surrounding neighborhoods.~~

[Changes in Minnesota Statutes Sec. 462.357, subdivision 1e allow nonconforming structures to be replaced as well as uses to cease for up to one year. This insertion adds an explicit reference to the state statute guiding the ordinance, simplifies language, and uses same wording as found in Sec. 62.109(d).

There has been confusion about the meaning of "enlargement," and what types can be approved. The proposed language acknowledges different types of enlargement so that they can be dealt with individually when appropriate. Further, the City Attorney has advised that 'expansion', which is the term used in the state statute, should be used instead of the term 'enlargement.' The term 'expansion' can cover increasing the size and volume of a structure, expansion of a use into more space within a structure, 'relocation' of a nonconforming use of land on a site or of a nonconforming use to another part of a building. The amendment simplifies duplicative language and is consistent with the language in Sec. 62.109(d).]

Sec. 62.102. Legal nonconforming uses and structures.

~~For the purposes of this section, "use" means the principal purpose for which land or a building is being occupied.~~ A use or structure will be presumed legally nonconforming if it can be demonstrated by clear and convincing evidence that prior to October 25, 1975, the use or structure was established, converted, or ~~enlarged~~ expanded and occupied pursuant to building permits issued by the city; or if the use or structure was allowed in its location at the time it was established; or if it can be demonstrated by clear and convincing evidence that the particular use or structure ~~has~~ been in existence continuously ~~for twenty (20) years prior to~~ since December 13, ~~1956~~1976. The burden of proof shall be on the property owner. For the purposes of this chapter, "use" means the principal purpose for which land or a building is being occupied. A legal nonconforming structure is one that lawfully existed when created but does not now comply with the area, width, height, yard, percent of lot coverage, or other regulations concerning bulk or location on the lot, off-street parking and loading requirements, or other regulations of the district in which it is located. The planning commission may approve permits granting legal nonconforming ~~use~~ status to uses or structures that do not meet these standards, as set forth in section 62.109(a) and (b).

[This amendment is required to comply with state law. Many uses can be established without building permits, and finding building permits can be impossible. If there is evidence that a use now nonconforming was established when the zoning code allowed that use or if the property was rezoned after the use was in existence so that it then became nonconforming, that use has been administratively approved as a legal nonconforming use. This is also the most logical location for the definition of a legal nonconforming structure.]

Sec. 62.103. Nonconforming lots.

...

Sec. 62.104. Nonconforming uses of land.

Nonconforming uses of land are subject to the following provisions:

- (a) A legal nonconforming use of land may continue unless it is discontinued for a period of more than one (1) year.
- (b) A legal nonconforming use shall not be ~~enlarged~~ expanded to a greater height nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this code unless the planning commission approves a permit for the expansion or extension as set forth in section 62.109(d).

- (c) A nonconforming use shall not be moved in whole or in part to any other portion of the lot unless the planning commission approves a permit for the relocation as set forth in section 62.109(d).

[In some instances moving the location of a nonconforming use of land to another portion of the lot may make sense and further the intent of the zoning code. Planning Commission review of the proposed move under the provisions of Sec. 62.109(d) can accommodate these circumstances.]

- (d) If ~~such a~~ nonconforming use of land ceases for any reason for a period of ~~ninety (90) days or more~~ than one (1) year, any subsequent use of such land shall conform to the regulations specified by this code for the district in which such land is located. ~~This is not intended for those uses which remain on the land but whose activity may cease for a period longer than ninety (90) days due to reasons associated with the customary operation of such use.~~

[State statute provides that nonconformities may continue as long as the nonconformity or occupancy is not discontinued for more than one year. Since the 90 day restriction is changed, the language regarding uses discontinued for 90 days is not needed. Intermittent uses should occur at least once a year to maintain legal nonconforming status.]

...

- (f) An existing off-street parking space for one- and two-family dwellings in a required front or side yard shall be considered a legal nonconforming use provided the parking space was established pursuant to a curb cut permit issued by the department of public works prior to October 15 25, 1975, and the parking space has been continuous since the permit was issued or it can be demonstrated by clear and convincing evidence that the parking space has been in existence and used continuously since October 25, 1975. The burden of proof shall be on the property owner.

[The incorrect date was inserted into the first date listed; the effective date of the rewritten zoning code was October 25, 1975.]

- (g) Any replacement of equipment will not result in an increase in noise, vibration, glare, dust, or smoke.

[Ensures that nonconforming uses of land do not become more nonconforming through side effects of equipment replacement. Change is similar to language in the Minneapolis zoning code, Sec. 531.50.(b)(3).]

Sec. 62.105. Nonconforming structures with conforming uses.

Nonconforming structures with conforming uses are subject to the following provisions:

- (a) A legal nonconforming structure may continue, including through repair, replacement, restoration, maintenance, and improvement, unless the nonconformity is discontinued for a period of more than one (1) year.

[Added language conforms to the specific language in the state statute.]

- (b) A nonconforming structure may be enlarged physically expanded or altered so long as such enlargement expansion or alteration does not

increase its nonconformity and the use in the expanded or altered area of the structure is not subject to a zoning separation requirement. Accessory buildings may be added so long as they conform in all respects to the requirements of section 63.501, accessory buildings.

[Changes language to be consistent with statute, but clearly states that other zoning requirements for use separations still apply. The sentence on accessory buildings is not needed; it should be obvious that accessory structures need to meet code requirements for accessory structures.]

- (c) When a nonconforming structure is removed or destroyed by any means, including by fire or other peril, to an the extent of more greater than sixty (60) fifty (50) percent of its estimated market value, as indicated in the records of the county assessor replacement cost, exclusive of the foundation, at the time of destruction, the removal or damage, and no building permit for repair or replacement of the structure has been applied for within one hundred-eighty (180) days of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code. A nonconforming residential garage, however, may be rebuilt in a rear yard with the same nonconforming setback within one (1) year of its destruction, provided that it is within the maximum height and size limits for an accessory structure outlined in section 63.501(c) and (d).

[For nonconforming structures with conforming uses, Minnesota Statute 462.357 Subdivision 1e (a) (2) applies. This statute allows nonconforming structures to be reconstructed if a building permit application has been made within 180 days. Since any nonconforming structure may be replaced if a building permit has been applied for within 180 days under this provision, there is no need for specific reference to residential garage replacement.]

Sec. 62.106. Nonconforming uses of structures, or structures and land in combination.

Nonconforming uses of structures, or structures and land in combination, are subject to the following regulations:

- (a) A Legal nonconforming use of structures, or structures and land in combination, may continue, including through repair, replacement, restoration, maintenance, and improvement of structures, unless the nonconformity is discontinued for a period of more than one (1) year.

[Amendment conforms to the specific language in the state statute.]

- (b) A legal nonconforming use may be changed to a use permitted in the district in which it is located or to a new nonconforming use if the new nonconforming use is also listed in on the same clause line of the use tables in Chapter 66 of the code as the most recent nonconforming use. A legal nonconforming use may be changed to a use permitted in the district in which the most recent nonconforming use is first allowed, or a principle principal use permitted in a district that is more restrictive than the district in which the most recent nonconforming use is first allowed, provided the planning commission approves a permit for the change as set forth in section 62.109(c).

- (c) The number of legal nonconforming uses on a zoning lot shall not be increased unless the planning commission approves a change of nonconforming use permit as set forth in section 62.109(c).
- (e-d) When a nonconforming use changes to a use permitted in the district in which the property is located, a nonconforming use may not thereafter be resumed. When a nonconforming use changes or to a use first permitted in a more restrictive district, the nonconforming uses first permitted in less restrictive districts shall not thereafter be resumed.

[Changes to (b) and (d), clarify existing confusing language and update language to be consistent with the 2004 reformatting of the zoning code, which replaced clauses with use tables. New (c) addresses requests to add related nonconforming uses to an existing use – for example dog day care to a pet grooming business or auto sales to an auto repair business. It has been unclear which section of Chapter 62 is best suited to address these types of applications, enlargement of nonconforming use or change of nonconforming use. After discussion, the recommendation is that the findings for change of nonconforming use are the most relevant.]

- (d e) A legal nonconforming use may be extended throughout any parts of a structure that were manifestly arranged or designed for the use, but it shall not be ~~extended~~ expanded to occupy other parts of the structure or to occupy any land or a larger area of land outside the structure, unless the planning commission approves a permit for the expansion as set forth in section 62.109(d).
- (e f) A nonconforming use shall not be moved to a new location on the zoning lot or ~~enlarged~~ expanded in any way, including increased cubic content, unless the planning commission approves a permit for ~~an enlargement~~ the expansion or relocation as set forth in section 62.109(d).
- (f) ~~A structure containing a nonconforming use shall not be moved to another location on its lot.~~

[Changes provide options for relocating nonconforming uses when it makes sense to do so.]

- (g) Any replacement of equipment will not result in an increase in noise, vibration, glare, dust, or smoke.

8/10/11 NPC end point

- (gh) When a legal nonconforming use is discontinued or ceases to exist for a continuous period of ~~three hundred sixty-five (365) days~~ more than one(1) year, the building, or building and land in combination, shall thereafter be used in conformance with the regulations of the district in which it is located, unless the planning commission approves a permit to reestablish the nonconforming use as set forth in section 62.109(e). A residential building vacant for more than one (1) year may be re-established at the number of units for which it was originally constructed so long as it has not been physically converted to a fewer number of units, in which case it may be re-established at the number of units to which it was converted.

[Amendment makes the code language the same as the statute. The change would also allow a vacant building to be restored to its original number of units or fewer without going through the public hearing process to re-establish the nonconforming use. Requiring a true duplex (for example) to go through this process is confusing to purchasers and neighbors. These uses are generally not controversial, and it makes no sense to require the owner to remove, at great expense, kitchens and other features that are part of the building's original construction.]

- (hi) When a building structure containing a nonconforming use is removed or destroyed by any means, including by fire or other peril, to an the extent of more than sixty (60) fifty (50) percent of its replacement cost estimated market value as indicated in the records of the county assessor, exclusive of the foundation, at the time of the destruction, and no building permit for repair or replacement of the structure has been applied for within one hundred eighty (180) days of the time of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this code.

[Minnesota Statutes allows nonconforming uses damaged more than 50% of their "market value" to be replaced as long as a building permit has been applied for within 180 days of the damage. "Replacement cost" and "market value" can differ significantly.]

- (i) ~~On a building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair of walls, roofs, fixtures, wiring, or plumbing, provided that the cubic content of the building as it existed at the time of adoption or amendment of this code shall not be increased.~~

[These provisions moved to (a) and (f) above.]

- (j) ~~Where nonconforming use status applies to a building and land in combination, removal or destruction of the building shall eliminate the nonconforming status of the land.~~

[This is already covered in (g) and (h) above and is not needed.]

- (k)(j) Accessory off-street parking lots or structures may be constructed on the site of a nonconforming use, so long as they comply with the requirements of ~~sections~~ articles 63.300 and ~~63.504~~ 65.900 and the setbacks required in the district where the use is first permitted.

[63.300 is an article title, not a section. Minor text amendments propose moving all regulations for accessory uses to article 65.900 rather than the three different locations in the current code.]

- (k)(k) In any RM3, ~~T4~~, OS, B1, B2, B3, I1, or VP district, nonconforming residential uses may be ~~enlarged~~ expanded, extended, or reconstructed or altered provided that in the B1, B2, B3, I1, and VP districts no additional dwelling units are added on the lot. Any business operated out of a residence must meet all home occupation standards. Expansion, extension or reconstruction of Nonconforming residential uses must also shall meet the T2 height and minimum yard setback requirements for the use (except for lot area per dwelling unit) of section 66.230, residential district density and dimensional standards, for the district in which the use is first permitted and the requirements for off-street parking, section in article

~~63.200. Reconstruction of the uses must begin within one (1) year of the removal of the buildings.~~

[This eliminates redundant language, as a timeline for reestablishment is already provided for in Sec. 62.106(h). T4 needs to be added to this list because 1- and 2-family dwellings are nonconforming in T4. Multifamily residential uses are permitted in the RM3, T4, and OS districts, so adding dwelling units would make nonconforming residential uses more conforming and should not be restricted by this paragraph. The current reference to the requirements of section 66.230 "for the district in which the use is first permitted" requires RL One-family Large Lot setbacks for one-family residential. The T2 Traditional Neighborhood standards are a better fit for the higher density residential, commercial, and industrial districts to which this paragraph applies.]

- ~~(m)~~(l) In RL--R4 districts, existing legal nonconforming two-family residential uses may be ~~enlarged~~expanded, or extended, ~~reconstructed or altered~~. The ~~two-family uses~~ expansion must meet the yard setbacks and the percentage of lot coverage requirements of the ~~schedule of regulations, section 61.101, as required in the zoning district in which located or in the RT1 district, whichever is greater, the height limit of the district in which located, and the requirements for off-street parking, section in article~~ 63.200. ~~Reconstruction of the uses must begin within one (1) year of the removal of the buildings.~~

[Replaces outdated code reference with current reference; makes the regulation more workable; and eliminates redundant language.]

- ~~(n)~~(m) In any residential district, existing greenhouses may be ~~enlarged~~expanded, extended, ~~reconstructed or altered~~. The greenhouses must meet the height, yard setbacks, and percentage of lot coverage of section 66.230, residential district density and dimensional standards, for the district in which they are located and the requirements for off-street parking, ~~section article~~ 63.200. ~~Reconstruction of the uses must begin within one (1) year of the removal of the buildings.~~

[All nonconforming uses may be reconstructed according to Minnesota Statute. This eliminates redundant language as a timeline for reestablishment is already provided for in Sec. 62.106.h.]

- ~~(o)~~(n) Existing auto body shops located in zones other than industrial zones shall be considered, for purposes of changes in nonconforming uses, as B3 uses. Auto body shops that are legally nonconforming in T2-T4 and B3 zoning districts may expand even though they are not permitted uses in these zoning districts. Auto service stations in T2, T3 and B2 zoning districts which remove their gas tanks and pumps will be regarded as legal nonconforming auto repair stations. Auto repair stations and auto specialty stores that are legally nonconforming in T2-T4 zoning districts may expand even though they are not permitted uses in these zoning districts.

- ~~(p)~~ In RL--RT1 residential districts, a second one-family or two-family dwelling on a single lot is exempt from paragraph (h) above and may be reconstructed provided that the number of total dwelling units on the lot is not increased and the building is not enlarged or extended unless it meets the setback and lot coverage requirements for principal structures of the

~~district. Reconstruction of the building must begin within one (1) year of the removal of the building, unless the board of zoning appeals grants an extension for reconstruction.~~

[This eliminates redundant language. The proposed amendments to Sec. 62.106(h) above would provide a timeline for reconstruction of such dwellings consistent with the state statute.]

- (~~q~~)(o) Existing gun shops that are legally nonconforming, and are not pawn shops, shall be considered, for purposes of changes in nonconforming uses, as permitted uses and may expand even though gun shops are not permitted uses in the district, provided that the amount of floor area devoted to the display and sale of firearms is not increased and that any new public entrance is not located within one thousand (1,000) radial feet of any "protected use," as defined in section 65.520(a) of this Code.
- (~~r~~)(p) Existing municipal yard waste sites that are legally nonconforming in the IR Light Industrial Restricted Districts may expand as a conditional use under the provision of section 61.501-61.504 and section 65.331 even though new municipal yard waste sites are not permitted in IR light industrial restricted districts.

Sec. 62.109. Nonconforming use permits.

- (a) *Establishment of legal nonconforming use status.* The planning commission may grant legal nonconforming status to ~~the uses of or structures when such use fails to~~ that do not meet the standards of for legal nonconforming status in section 62.102 if the commission makes the following findings:

[Language changed to be consistent with Sec. 62.102.]

- (1) ~~The use occurs entirely within an existing structure;~~

[Deleting the language specific to 'structures' clarifies that the planning commission may grant legal nonconforming use status to outdoor uses as well as uses within a structure.]

- (21) The use or a nonconforming use of similar or greater intensity first permitted in the same clause of the zoning code district or in a more less restrictive zoning district has been in existence continuously for a period of at least ten (10) years prior to the date of the application.

[Clarifies language and corrects it to make sense and to make it consistent with how this section is actually administered.]

- (32) The off-street parking is adequate to serve the use;
- (43) Hardship would result if the use were discontinued;
- (54) Rezoning the property would result in "spot" zoning or a zoning inappropriate to surrounding land uses;

- (65) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (76) The use is consistent with the comprehensive plan; and.
- ~~(8) A notarized petition of two thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.~~

The application for the permit shall include ~~the petition~~, evidence of a ten-year period of existence, evidence that conversion of the use and structure would result in hardship, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit.

[Consent petitions are often very difficult and time consuming to obtain, especially when property owners are commercial enterprises located in other states, or there are language and cultural barriers. If a nonconforming use has been in existence for ten years, is not detrimental, and the applicant can make a case that its discontinuance would result in hardship, it may not be reasonable to require a petition in order to have the Planning Commission hold a public hearing to consider the case. Owners of property within 350 feet are notified of public hearings, and their testimony is considered in Planning Commission deliberations and decisions on what is best. If a petition requirement prevents the possibility of a public hearing, we may not get to what is best in a particular case.]

- (c) *Change of nonconforming use.* The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

- (1) The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use;
- (2) The traffic generated by the proposed use is similar to that generated by the existing nonconforming use;
- (3) The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (4) The use is consistent with the comprehensive plan.

The planning commission's findings may be a general rule or findings in a specific case.

[Clarifies language and responds to requests to add related nonconforming uses to an existing use.]

- (d) *EnlargementExpansion or relocation of nonconforming use.* The planning commission may permit the enlargement expansion or relocation of a legal nonconforming use if the commission makes the following findings:
- (1) In residential districts, tThe enlargementexpansion, or relocation will not result in an increase in the number of dwelling units;
 - (2) For enlargements-expansion of a structure, the enlargement expansion will meet the yard, height and percentage of lot coverage requirements of the district;
 - (3) The appearance of the enlargementexpansion or relocation will be compatible with the adjacent property and neighborhood;
 - (4) Off-street parking is provided for the enlargementexpansion or relocation that meets the requirements of section article 63.200 for new structures-uses;
 - (5) Rezoning the property would result in a "spot" zoning or a zoning inappropriate to surrounding land use; and
 - (6) After the enlargementexpansion or relocation, the use will not result in an increase in noise, vibration, glare, dust, or smoke; be detrimental to the existing character of development in the immediate neighborhood; or endanger the public health, safety, or general welfare;
 - (7) The use is consistent with the comprehensive plan; and
 - (8) A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the enlargementexpansion or relocation.

[There has been confusion about the meaning of the term 'enlargement.' These changes replace the term 'enlargement' with the term 'expansion,' which is the term used in state statutes, and also permits relocation when that would create a better situation for both the use and the surrounding area. In non-residential districts, density is regulated by floor area ratio (FAR), not number of units.]

- (e) *Reestablishment of nonconforming use.* When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:
- (1) A legal nonconforming use existed on the property within ten (10) years of the date of reestablishment and was in existence continuously for a period of at least ten (10) years prior to ceasing.
 - (24) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose;

- (32) The proposed use is equally appropriate or more appropriate to the district than the previous nonconforming use;
- (43) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare; and
- (54) The proposed use is consistent with the comprehensive plan; and.
- ~~(5) A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.~~

[Replaces '365 days' with language from the statute: 'more than one (1) year.' Establishes a sunset date for reestablishing a nonconforming use. Ten years was selected as the threshold because it is currently the threshold to establish a legal nonconforming use.

The provision in (e) for reestablishment of a nonconforming use is written for very narrow use -- only when "the structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose." Zoning that prevents property from being reasonably or economically used is, essentially, the definition of a "taking," and courts could require the City to buy the property or pay damages to the property owner. Sec. 62.109(e) offers an option that allows the City to permit the reestablishment of a nonconforming use when the current zoning regulations would otherwise prevent the property from being reasonably or economically used, and thus avoids the legal liability of a taking.

If a structure cannot reasonably or economically be used for a conforming purpose, and the proposed use is consistent with comprehensive plan and not detrimental to the area, it may not be reasonable to require a petition in order to have the Planning Commission hold a public hearing and consider the merits of the case. Consent petitions are often very difficult and time consuming to obtain, especially when property owners are commercial enterprises located in other states and when there are language and cultural barriers. Owners of property within 350 feet are notified of public hearings, and their testimony is considered in Planning Commission deliberations and decisions on what is best. If a petition requirement prevents the possibility of a public hearing, it may prevent reasonable and economical use of a building, and prevent the City from using the provisions in (e) for reestablishment of a nonconforming use as a way to avoid the legal liability of a taking.]

Amendments to Chapter 64 – Signs

Sec. 64.301. Nonconforming signs.

- (a) ~~No~~ A nonconforming sign or sign structure shall not be enlarged or altered in a way which increases its nonconformity except for temporary extensions on billboards as permitted in paragraph (c) of this section. Billboard extensions are not permitted. No existing nonconforming sign or sign structure shall be enlarged, extended or moved except in conformance with the provisions of this code. Ordinary repair, restoration, maintenance and improvement work may be done on any legal nonconforming sign. Addition of illumination shall require that a sign be brought into conformance with all requirements of this chapter.

[Changes wording to be more consistent with that in Chapter 62. Combines and moves language from former (c) and (d) below to (a), where it fits better. Removes prohibition of billboard extensions (see note below under new (c) for more explanation). Amendment also clarifies that addition of illumination is not considered “ordinary repair, restoration, maintenance and improvement.”]

- (b) ~~Should such~~ When a nonconforming sign or sign structure be is removed or destroyed by any means, including by fire or other peril to an the extent of greater than fifty-one (51) (50) percent of its replacement cost estimated market value, as indicated in the records of the county assessor at the time of the removal or damage, and no building permit for its repair or replacement has been applied for within one hundred eighty (180) days of the removal or damage, it shall not be reconstructed except in conformity with the provisions of this chapter. Should a nonconforming sign or sign structure be removed or discontinued for a period of more than one (1) year, it shall not be replaced or reconstructed except in conformance with the provisions of this code.

[Makes the language for destruction or removal of signs and sign structures consistent with the state statute that allows nonconforming structures (signs) damaged by fire or other peril to an extent greater than 50% of their market value to be replaced as long as a building permit has been applied for within 180 days of when the sign incurred damage. The statute also changed “replacement cost” to “market value. The proposed language is made consistent with that in Chapter 62, Nonconforming Lots, Uses, and Structures as well.]

- (c) ~~Should such sign or sign structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.~~
- (d) ~~No existing sign devoted to a use not permitted by the zoning code in the zoning district in which it is located shall be enlarged, extended or moved except in changing the sign to a sign permitted in the zoning district in which is it located.~~

[Paragraphs (c) and (d) have been included in the general regulation regarding nonconforming signs and sign structures in paragraph (a), which adds simplicity and clarity.]

(e) ~~When a structure loses its nonconforming status, as set forth in the zoning code, section 62.106(g) all signs devoted to the structure shall be removed and all signs painted directly on the structure shall be repainted in a neutral color or a color which will harmonize with the structure.~~

(f) ~~Signs may be repainted, reposted or replaced when there is a change of any nonconforming use as set forth in the zoning code, section 62.105(e).~~

[Paragraphs (e) and (f) are not needed since the intent of the regulations is already covered by Sec. 64.205, Abandoned signs: *Any business sign which advertises, identifies or pertains to an activity no longer in existence shall be removed by the owner of the property within thirty (30) days from the time the activity ceases existence by removing the sign face, painting the sign face a neutral color or installing blank sign face panels. This provision does not apply to seasonal activities during the regular periods in which they are closed. If the sign face is not re-used within one (1) year, the remaining sign structure must be removed unless the zoning administrator grants an extension subject to the owner submitting a statement of intent and a reasonable time line for re-use of the sign structure.* An amendment will also be proposed to Sec. 64.205 to address an exception for historic signs painted on historic building walls as part of a minor text amendment package.]

(f)(c) Any rectangular billboard may contain extensions, cutouts or top lettering which occupy a total area not in excess of fifteen (15) percent of the area of the basic advertising sign and form an integral part of the design thereof; and provided further, that no such extension, cutout or top lettering may project more than six (6) feet from the top, eighteen (18) inches from either side or fifteen (15) inches from the bottom of the basic rectangular advertising message. The area of an extension, cutout or top lettering shall be deemed to be the area of the smallest rectangle into which such extension, cutout or top lettering will fit. A sign permit is required for a temporary billboard extension. Temporary extensions shall be completely removed not later than ninety (90) days after installation and the total combined period of temporary extensions for a sign face shall not exceed one hundred eighty (180) days per year.

[Changes to (a) and new (c) reflect the decision of the Eighth Circuit Court of Appeals filed August 25, 2010, that found the prohibition against billboard extensions adopted by the City Council under CF #06-160 to be unenforceable. The amendment simply reinstates language that was in the code previously.]

ARTICLE VI. 64.600. SPECIAL SIGN DISTRICTS

Special district sign plans are found in Sections 64.610 – 64.750. Language pertaining to nonconforming signs should be deleted from these sections because the text either duplicates the provisions and regulations for nonconforming signs in section 64.301 and is therefore redundant or is inconsistent with Minnesota Statutes. Local zoning provisions for continuation of structures and uses made nonconforming by adoption of an additional zoning control are governed by, and must be consistent with, the provisions in Minnesota Statutes Sec. 462.357 for such legal nonconforming uses. Minnesota Statutes sec. 642.357, Subd. 1e, specifically allows legal

nonconforming uses to "be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless: (1) the nonconformity or occupancy is discontinued for a period of more than one year; or (2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, as indicated in the records of the county assessor at the time of the damage, and no building permit has been applied for within 180 days of when the property is damaged."

The deleted language is essentially the same for all special sign districts, with language variation for Sec. 64.630, West Side special district sign plan and Sec. 64.770, Downtown area special district sign plan, while the content remains the same.

Sec. 64.610. Sunray-Battlecreek-Highwood, district one community council special district sign plan.

....
 (e) ~~Nonconforming signs. Regulation of nonconforming signs within the Sunray-Battlecreek-Highwood, district one community council special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-~~

(1) ~~No nonconforming sign shall be:~~

a. ~~Altered or enlarged in any way; or~~

b. ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~

c. ~~Relocated to any other location in the Sunray-Battlecreek-Highwood, district one community council special sign district; or~~

d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~

e. ~~Maintained through replacement of structural elements.~~

(2) ~~A nonconforming sign shall be immediately removed from the Sunray-Battlecreek-Highwood, district one community council special sign district at the cost of the owner if:~~

a. ~~It is an imminent danger to life or property; or~~

- b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
- c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

~~(e)(g)~~ *Sign permits; administration.*

Sec. 64.620. Greater Eastside Area special district sign plan.

....

~~(e) — Nonconforming signs. Regulation of nonconforming signs within the Greater Eastside Area special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~

- ~~(1) — No nonconforming sign shall be:~~
 - a. — Altered or enlarged in any way; or
 - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
 - c. — Relocated to any other location in the Greater Eastside Area special sign district; or
 - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
 - e. — Maintained through replacement of structural elements.
- ~~(2) — A nonconforming sign shall be immediately removed from the Greater Eastside Area special sign district at the cost of the owner if:~~
 - a. — It is an imminent danger to life or property; or
 - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
 - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

~~(e)(f)~~ *Sign permits; administration.*

Sec. 64.630. West Side special district sign plan.

....

- (c) *Advertising sign restrictions.* Advertising signs shall not be permitted within the sign plan district except signs on transit shelters and courtesy benches licensed or franchised by the city. ~~Construction, erection, replacement, or renovation of advertising signs shall not be permitted. Existing, nonconforming, advertising signs shall:~~

- (1) ~~Be immediately removed, at the owner's expense, from the special sign district if:~~

- a. ~~It is an imminent danger to life or property; or~~
- b. ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
- c. ~~Use of such sign, signified by a lack of advertising message, has been discontinued for a period of three (3) consecutive months.~~

- (2) ~~Not be:~~

- a. ~~Altered or enlarged in any way; or~~
- b. ~~Replaced by another nonconforming sign; or~~
- c. ~~Relocated to any other location in either this district or the Smith Avenue special sign districts; or~~
- d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
- e. ~~Maintained through replacement of structural elements.~~

~~(c)(d)~~ *Administration and enforcement.*

Sec. 64.640. Dayton's Bluff special district sign plan.

....

- (e) ~~Nonconforming signs.~~ Regulation of nonconforming signs within the Dayton's Bluff special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which

would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-

- (1) — No nonconforming sign shall be:
 - a. — Altered or enlarged in any way; or
 - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
 - c. — Relocated to any other location in the Dayton's Bluff special sign district; or
 - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
 - e. — Maintained through replacement of structural elements.
- (2) — A nonconforming sign shall be immediately removed from the Dayton's Bluff special sign district at the cost of the owner if:
 - a. — It is an imminent danger to life or property; or
 - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
 - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

(e)(f) *Sign permits; administration.*

Sec. 64.660. North End/South Como special district sign plan.

....

- (e) — *Nonconforming signs.* Regulation of nonconforming signs within the North End/South Como special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:-

- (1) — No nonconforming sign shall be:
 - a. — Altered or enlarged in any way; or
 - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
 - c. — Relocated to any other location in the North End/South Como special sign district; or
 - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
 - e. — Maintained through replacement of structural elements.
- (2) — A nonconforming sign shall be immediately removed from the North End/South Como special sign district at the cost of the owner if:
 - a. — It is an imminent danger to life or property; or
 - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
 - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

~~(e)(g)~~ Sign permits; administration.

Sec. 64.670. Thomas/Dale district 7 special district sign plan.

....

~~(f) — Nonconforming signs. Regulation of nonconforming signs within the Thomas/Dale district 7 special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~

- (1) — No nonconforming sign shall be:
 - a. — Altered or enlarged in any way; or

- b. ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~
 - c. ~~Relocated to any other location in the district 7 special sign district; or~~
 - d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~
 - e. ~~Maintained through replacement of structural elements.~~
- (2) ~~A nonconforming sign shall be immediately removed from the district 7 special sign district at the cost of the owner if:~~
- a. ~~It is an imminent danger to life or property; or~~
 - b. ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
 - c. ~~Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(f)(g)~~ *Administration and enforcement.*

Sec. 64.710. Hamline Midway special district sign plan.

....

~~(f)~~ ~~*Nonconforming signs.*~~ The regulation of nonconforming signs shall be pursuant to the provisions of article iii, nonconforming signs, of this chapter.

~~(f)(g)~~ *Administration and enforcement.* Whenever a permit request for an advertising sign in the Hamline Midway special sign district is requested, such permit shall not be issued unless the plans for the advertising sign have been approved by the zoning administrator as in compliance with this supplement and other provisions of chapter ~~6664~~, signs.

Sec. 64.720. Saint Anthony Park special district sign plan.

....

~~Signs within the Saint Anthony Park special sign district which lawfully existed prior to the adoption of this sign plan and which would be prohibited, regulated or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as~~

legal nonconforming signs under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:

- (1) — No nonconforming sign shall be:
 - (a) — Altered or enlarged in any way; or
 - (b) — Replaced by another nonconforming sign, though a change in the message on a nonconforming sign will not be deemed to be a replacement; or
 - (c) — Relocated to any other location in the Saint Anthony park special sign district; or
 - (d) — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
 - (e) — Maintained through replacement of structural elements; or
- (2) — Any nonconforming sign shall be immediately removed from the Saint Anthony Park special sign district at the cost of the owner if:
 - (a) — It is an imminent danger to life or property; or
 - (b) — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss; or
 - (c) — Use of such sign has been discontinued for a period of three (3) consecutive months.

....

Sec. 64.730. Merriam Park special district sign plan.

....

- (e) — ~~Nonconforming advertising signs.~~ Signs within the Merriam Park special district which lawfully existed prior to the adoption of this sign plan by the city council, and which would be prohibited, regulated or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as legal nonconforming signs under the provisions of section 64.300, nonconforming signs, subject to the following additional requirements:
 - (1) — No nonconforming advertising signs shall be:
 - a. — Altered in any way, other than changing the message on a painted or printed sign;

- b. ~~Replaced by another nonconforming sign;~~
 - c. ~~Relocated to any other location in the Merriam Park special district;~~
 - d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its display surface, as determined by the city; or~~
 - e. ~~Maintained through replacement of structural elements.~~
- (2) ~~Any nonconforming advertising sign shall be immediately removed from the Merriam Park special district at the cost of the owner:~~
- a. ~~If it incurs damage in an amount exceeding fifty (50) percent of its display surface, as determined by the city; or~~
 - b. ~~If use of such sign has been discontinued for a period of three (3) consecutive months.~~

Sec. 64.735. Snelling Hamline special district sign plan.

....

- (e) ~~Nonconforming signs.~~ ~~Nonconforming signs within the Snelling Hamline special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~

- (1) ~~No nonconforming sign shall be:~~
 - a. ~~Altered or enlarged in any way; or~~
 - b. ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~
 - c. ~~Relocated to any other location in the Snelling Hamline special sign district; or~~
 - d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~

- e. — Maintained through replacement of structural elements.
- (2) — A nonconforming sign shall be immediately removed from the Snelling-Hamline special sign district at the cost of the owner if:
 - a. — It is an imminent danger to life or property; or
 - b. — It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or
 - c. — Use of the sign has been discontinued for a period of three (3) consecutive months.

(c)(f) *Sign permits; administration.*

Sec. 64.740. Macalester-Groveland special district sign plan.

....

- (e) — ~~Nonconforming signs.~~ Regulation of nonconforming signs within the Macalester-Groveland special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:
 - (1) — No nonconforming sign shall be:
 - a. — Altered or enlarged in any way; or
 - b. — Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or
 - c. — Relocated to any other location in the Macalester-Groveland special sign district; or
 - d. — Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or
 - e. — Maintained through replacement of structural elements.

(2) ~~A nonconforming sign shall be immediately removed from the Macalester-Groveland special sign district at the cost of the owner if:~~

- a. ~~It is an imminent danger to life or property; or~~
- b. ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
- c. ~~Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(c)(g)~~ *Sign permits; administration.*

Sec. 64.755. Shepard Davern special district sign plan.

....

(e) ~~Nonconforming signs.~~ Regulation of nonconforming signs within the Shepard Davern special sign district which lawfully existed prior to the effective date of this sign plan or any amendments hereto and which would be prohibited, regulated, or restricted under the provisions of this plan, may continue to exist as legal nonconforming signs regulated under the provisions of section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:

(1) ~~No nonconforming sign shall be:~~

- a. ~~Altered or enlarged in any way; or~~
- b. ~~Replaced by another nonconforming sign, though a change in the message will not be deemed to be a replacement; or~~
- c. ~~Relocated to any other location in the Shepard Davern special sign district; or~~
- d. ~~Reconstructed after incurring damage in an amount exceeding fifty (50) percent of its replacement cost at the time of the loss, as determined by the city; or~~
- e. ~~Maintained through replacement of structural elements.~~

(2) ~~A nonconforming sign shall be immediately removed from the Shepard Davern special sign district at the cost of the owner if:~~

- a. ~~It is an imminent danger to life or property; or~~

- b. ~~It incurs damage in an amount exceeding fifty (50) percent of its replacement cost at the time of loss, as determined by the city; or~~
- e. ~~Use of the sign has been discontinued for a period of three (3) consecutive months.~~

~~(e)(g)~~ *Sign permits; administration.*

Sec. 64.770. Downtown area special district sign plan.

....

(c) Within the downtown special sign district, no advertising signs shall be subject to the following restrictions:

- (1) ~~No advertising signs shall be permitted except signs on transit shelters and courtesy benches licensed or franchised by the city;~~
- (2) ~~Advertising signs within the downtown special sign district which lawfully existed prior to the adoption of this special sign plan and which would be prohibited, regulated, or restricted under the provisions of this sign plan or amendments hereto, may continue to exist as legal nonconforming signs under the provisions of Legislative Code section 64.300 pertaining to nonconforming signs, subject to the following additional requirements:~~
 - a. ~~No nonconforming advertising sign shall be:~~
 - 1. ~~Altered or enlarged in any way; or~~
 - 2. ~~Replaced by another nonconforming advertising sign, though a change in the message on a nonconforming advertising sign will not be deemed to be a replacement; or~~
 - 3. ~~Relocated to any other location in the downtown special sign district; or~~
 - 4. ~~Reconstructed after incurring damage to the advertising sign display surface or advertising sign structure in an amount exceeding fifty one (51) percent of the replacement cost of the advertising sign display surface or fifty one (51) percent of the replacement cost of the advertising sign structure at the time of loss, as determined by the zoning administrator; or~~

~~5. Maintained through replacement of structural elements.~~

~~b. Any nonconforming advertising sign shall be immediately removed from the downtown special sign district at the cost of the owner if:~~

~~1. It is deemed unsafe or hazardous by the zoning administrator; or~~

~~2. The advertising sign face or advertising sign structure sustains damage in an amount exceeding fifty one (51) percent of the replacement cost of the advertising sign display surface or advertising sign structure at the time of loss; or~~

~~3. Use of such advertising sign has been discontinued for a period of three (3) consecutive months.~~

....

In Date	Address	Year Built	Original Use*	Applied For	Approved/Denied	Zoning	Proposed amendment impact
12/18/2008	602 Mendota St	1888	Double Dwelling	Reestablishment for 10-unit Apartment Building	Approved for 8-units	RT1	no change
6/30/2009	667 Edmund Ave	1886	Dwelling	Reestablishment as Duplex	Approved	R4	no change
8/20/2009	1112 Albemarle St	1895	Dwelling	Reestablishment as 4-plex	Approved for 4-plex	RT1	no change
11/10/2009	400 Charles Ave	1890	Duplex	Reestablishment as Duplex	Approved	R4	approvable
					Approved by PC; Duplex denied by CC on appeal		
12/2/2009	1784 Lafond Ave	1900	Duplex	Reestablishment as Duplex	Approved for triplex/3-units	R4	approvable**
12/3/2009	267 Front Ave			Reestablishment as 4-plex		B2	no change
1/1/2010	1204 Pacific St	1890	Dwelling	Reestablishment as Duplex	Approved	R4	approvable
1/7/2010	1224 Kennard St	1954	Double Dwelling	Reestablishment as Duplex	Approved	R3	approvable
			Single Family		Withdrawn (not vacant > 1 yr.)		
2/9/2010	924 Eleanor Ave	1900	Dwelling	Reestablishment as Duplex		R4	no change
				Reestablishment as 4-unit Residential Building			
3/9/2010	935 Beech St		4-plex		Approved for 4-units	RT1	no change
4/22/2010	1648 Bush Ave	1905	Duplex	Reestablishment as Duplex	Denied	R4	approvable**
4/27/2010	924 Forest St	1890	Dwelling	Reestablishment as Duplex	Denied	R4	no change
11/10/2010	941 Thomas Ave	1891	Double Dwelling	Reestablishment as 4-unit Building	Approved for 3-plex	RT1	no change
12/22/2010	1133 Payne Ave	1887	Dwelling	Reestablishment as Duplex	Approved	B2	approvable
2/25/2011	838 Goodrich Ave	1924	Dwelling	Reestablishment as Duplex	Approved	R4	approvable
3/30/2011	980 Fuller Ave	1928	Duplex	Reestablishment as Duplex	Approved	R4	approvable
4/12/2011	711 Charles Ave	1906	Dwelling	Reestablishment as Duplex	Approved	R4	no change
4/12/2011	783 Charles Ave	1906	Dwelling	Reestablishment as Duplex	Approved	R4	no change
5/6/2011	859 Hoyt Ave W	1938 & 1961	Dwelling (1938); Duplex (1961)	Reestablishment as Duplex	Approved	R3	approvable
	393 Geranium Ave E						
6/1/2011		1917	Duplex	Reestablishment as Duplex	Approved	R4	approvable
			Single Family		Approved for triplex/3-units		
6/2/2011	998 7th St E	1885	Dwelling	Reestablishment as Triplex		B3	no change
7/7/2011	765 Edgerton St	1901	Double Dwelling	Reestablishment as Triplex	Decision Pending	RT1	no change
			Single Family				
7/7/2011	599 Reaney Ave	1879	Dwelling	Reestablishment as Duplex	Decision Pending	R4	no change
7/14/2011	342 Bates Ave	1880	Duplex	Reestablishment as 4-plex	Decision Pending	RT1	no change
							** see attached documents

* Ramsey County assessor

RESOLUTION
CITY OF SAINT PAUL, MINNESOTA

Presented by

1 WHEREAS, Kim Nguyen, (PED Zoning File No. 09-511-754), pursuant to Leg. Code § 62.109(e), duly
2 applied for a permit to re-establish a legal nonconforming use for a duplex located at property commonly
3 known as 1784 Lafond Ave (PIN No. 332923120202) and legally described as FOREST LAWN
4 ADDITION TO ST. PAUL LOT 6 BLK 6; and

5
6 WHEREAS, the Zoning Committee of the Planning Commission, on December 29, 2009, duly conducted a
7 public hearing at which all persons present were given an opportunity to be heard pursuant to said
8 application in accordance with the requirements of Leg. Code §61.303 and, at the close of the hearing,
9 moved to recommend approval of the said application: and

10
11 WHEREAS, the Planning Commission, on January 8, 2010, based on the evidence presented to its Zoning
12 Committee at the December 29, 2009 public hearing, as substantially reflected in the record, made the
13 following findings of fact under Planning Commission File No. 10-3 which is incorporated herein by
14 reference:

15
16 "1. On June 20, 2006, the property was placed on the City's vacant building list. Because the property
17 has been listed as vacant for more than one year, the property can only be used for a conforming
18 use (a single-family home) unless the Planning Commission approves a nonconforming use permit.

19
20 2. According to the County Assessor's records, the property was a duplex in 1928; in 1971 there was
21 no mention of an extra kitchen but an extra bath was noted. The use was listed as conforming until
22 1975 when the zoning changed from a "B" Residence district to R4 and a duplex was no longer a
23 conforming use. Ramsey County records indicate that the property is a two family dwelling and has
24 been taxed as such. However, there are no records in the Department of Safety and Inspections of
25 building permits or a certificate of occupancy for a duplex, and no code compliance inspection has
26 taken place.

27
28 A 2006 rubbish complaint indicated that there were cabinets, metal, pipes, sheetrock and windows
29 on the property. This work was being done without permits and the property owner was ordered to
30 cease renovations until the proper permits were obtained.

31
32 3. Section 62.109(e) states: *When a nonconforming use of a structure, or structure and land in
33 combination, is discontinued or ceases to exist for a continuous period of three hundred sixty-five
34 (365) days, the planning commission may permit the reestablishment of a nonconforming use if the
35 commission makes the following findings:*

36
37 (1) *The structure, or structure and land in combination, cannot reasonably or economically be*
38 *used for a conforming purpose. This finding appears to be met. The applicant has stated*
39 *that the property is a duplex and has provided plans showing two units. Deconversion to a*
40 *single family home would require extensive remodeling.*

10-331

86 guideline is met. The applicant has stated that all remodeling work will take place within the
87 structure.
88

89 E. *For the purpose of protecting the welfare and safety of the occupants of any structure that*
90 *has been converted into a duplex without the necessary permits, a code compliance*
91 *inspection shall be conducted and the necessary permits obtained to bring the entire*
92 *structure into conformance with building and fire code standards; or the property owner*
93 *must, as a condition of the approval, make the necessary improvements to obtain the*
94 *necessary permits and bring the entire structure into building and fire code compliance*
95 *within the time specified in the resolution. This guideline can be met. The applicant will*
96 *need to work with the Department of Safety and Inspections regarding the certificate of*
97 *occupancy and code compliance issues.*
98

99 NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of
100 the City's Legislative Code, that the application of Kim Nguyen for Re-establishment of legal
101 nonconforming use as a duplex at 1784 Lafond Ave is hereby approved subject to the condition that the
102 applicant obtain a Certificate of Occupancy for two dwelling units.”
103

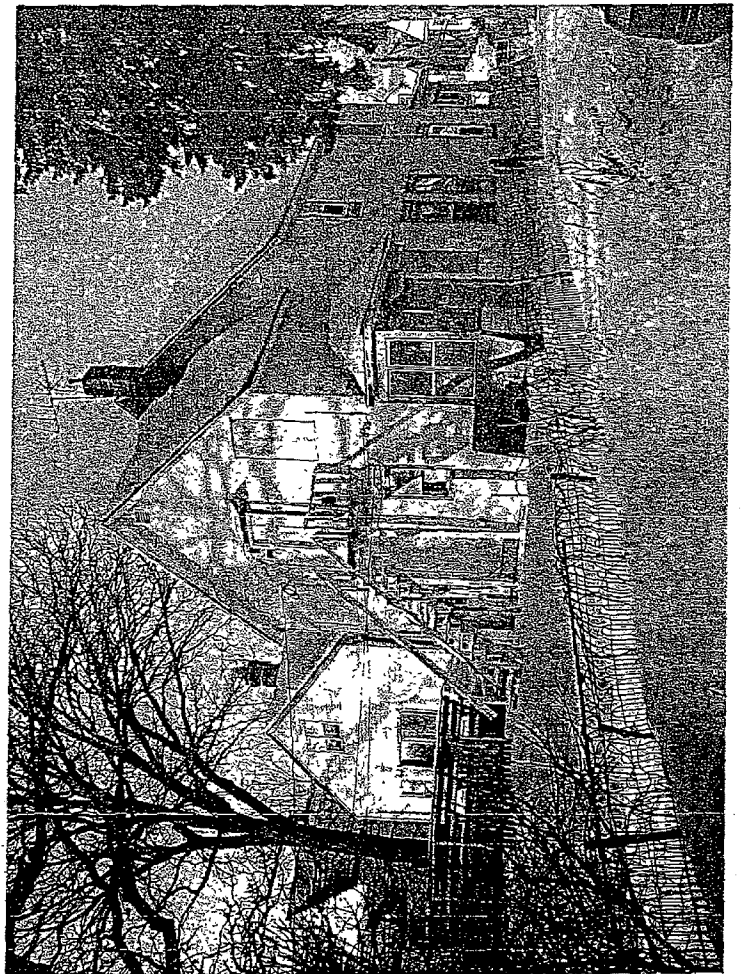
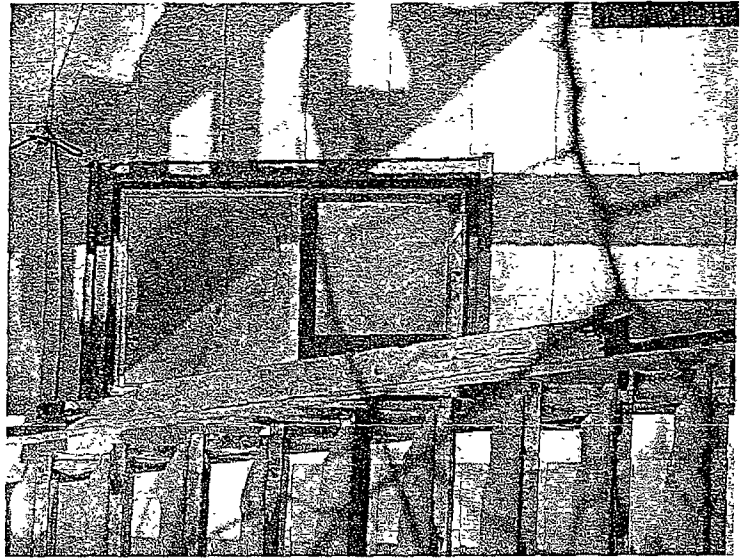
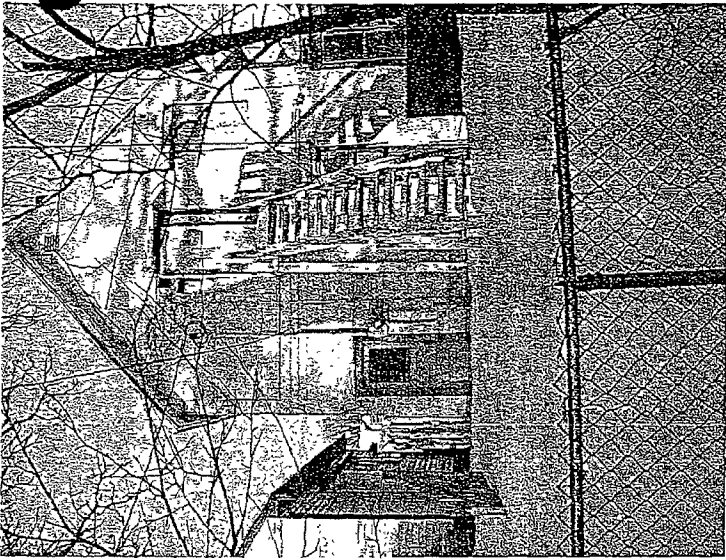
104 WHEREAS, on or about January 19, 2010, Neal McMahon, pursuant to the provisions of Leg. Code §
105 61.702(a), duly filed an appeal (Zoning File No. 10-011-315) from the determination made by the
106 Commission in this matter and requested a hearing before the City Council for the purpose of considering
107 the actions taken by the Planning Commission; and
108

109 WHEREAS, acting pursuant to Leg. Code § 61.702(b) and upon notice to affected parties, a public hearing
110 was duly conducted by the City Council on March 3, 2010, where all interested parties were given an
111 opportunity to be heard; and
112

113 WHEREAS, the Council, having heard the statements made and having considered the application, the
114 report of staff, the record, minutes, and recommendation of the Zoning Committee and the Commission's
115 resolution, does hereby
116

117 RESOLVE, that the Council of the City of Saint Paul grants the appeal of Mr. McMahon and, accordingly,
118 overturns the decision of the Planning Commission in this matter, based upon the following findings of the
119 Council:

120 The Council finds error in Planning Commission findings No.'s 3(1) and 3(3) as set forth in
121 Commission Resolution No. 10-3. Specifically, the Council finds that there was not sufficiently
122 compelling evidence presented to the Commission under finding 3(1) to demonstrate that the said
123 property could not reasonably or economically be used as a single-family home consistent with
124 the underlying zoning classification for this property, as the evidence indicated that the property
125 was once used as a single-family home. In addition, the Commission erred in its finding 3(3).
126 The majority of the homes on this block are single-family homes as reflected by the single-family
127 home use classification for this property. The subject property was vacant for more than one year.
128 Under the City's ordinances, the property has now properly reverted to a single-family use
129 classification which is consistent with the intent of maintaining the existing single-family use
130 classification for this neighborhood.
131



city of saint paul
 planning commission resolution
 file number 10-51
 date May 21, 2010

WHEREAS, Mr. Shinbay Yang, File # 10-310-741, has applied for a re-establishment of nonconforming use as a duplex under the provisions of §62.109(d) of the Saint Paul Legislative Code, on property located at 1648 Bush Ave, Parcel Identification Number (PIN) 272922430051, legally described as J N Rogers 3rd Addition Lot 3 Blk 3; and

WHEREAS, the Zoning Committee of the Planning Commission, on May 13, 2010, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. A Code Compliance Report was completed on August 31, 2009, addressed to Bank of America C/O Roxie. It recognized the property as a duplex, and identified numerous internal and external building repairs, as well as electrical, plumbing, and heating system work that must occur prior the property being sold or re-occupied. A letter addressed to the applicant and then-proposed buyer (Shinbay Yang) on November 20, 2009 (and accompanying DSI records) recommended the approval of the sale based on the applicant's compliance with several items, including: an issued Code Compliance Inspection Report; submitted cost estimates from licensed contractors for code compliance work; a submitted schedule for completion of code compliance work; and a signed Residential Use Affidavit submitted stating the applicant's intention to convert the property to a single family detached home.
2. The applicant applied for building permits to convert the property to a single family dwelling on March 15, 2010, but subsequently withdrew the application by March 26, 2010, indicating a change of mind. According to one of the applicants, they would like to re-establish the legal nonconforming duplex use in order for their son and his grandmother to live in the two units. If not approved, a building inspector will need to verify the conversion of this property to a single family detached use.
2. Section 62.109(e) states: *When a nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:*
 - * (1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is partially met. According to a Pro Forma submitted by the applicant, the cash flow/loss associated with the single family detached home (-\$13,440) is greater than that associated with a duplex use (-\$6,500). (These figures include debt payments for rehab work). However, the costs of rehabilitation improvements to

moved by Kramer
 seconded by _____
 in favor Unanimous
 against _____

Avenue.

D. All remodeling work for the duplex is on the inside of the structure unless the plans for exterior changes are approved by the Board of Zoning Appeals as part of the variance. (The Planning Commission will approve these changes for the cases they handle.) This guideline is met. As stated above, the rehabilitation work required to use the property as a duplex involves numerous internal repairs (electrical, plumbing, and heating system work) as well as some external building work such as the repair/replacement of deteriorated windows and doors, the repair of siding, soffit, fascia, and trim, a re-leveling of the front porch, the replacement of rotting deck boards, joists, and blocking at the bottom of a side entry deck, the replacement of concrete steps that access the public sidewalk, and exterior painting. Consistent with this, the applicant identifies necessary internal work involving the appliances, cabinets, doors, electrical, flooring, heating, painting, plumbing, and external work involving the decking, driveway, landscaping, roofing, siding, and windows. While exterior work will occur, it is limited to basic Code-related repairs of deferred maintenance items and aesthetic improvements that will not alter the structure from its current size or general appearance. In addition, most of the identified external work would be required to be performed even if this property were to be converted back to a single family detached house.

E. For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a duplex without the necessary permits, a code compliance inspection shall be conducted and the necessary permits obtained to bring the entire structure into conformance with building and fire code standards; or the property owner must, as a condition of the approval, make the necessary improvements to obtain the necessary permits and bring the entire structure into building and fire code compliance within the time specified in the resolution. This guideline is partially met (a Code Compliance Report has been issued), and can be completely met if the necessary repairs identified in the report are followed to continue its historical use as a duplex.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Mr. Shinbay Yang for a re-establishment of nonconforming use as a duplex at 1648 Bush Ave is hereby denied.

ZONING COMMITTEE STAFF REPORT

- | | |
|--|--|
| 1. FILE NAME: Shinbay Yang / Staci Vang | ZONING FILE # 10-310-741 |
| 2. APPLICANT: Shinbay Yang | HEARING DATE: May 13, 2010 |
| 3. TYPE OF APPLICATION: Nonconforming Use Permit-Reestablishment | |
| 4. LOCATION: 1648 Bush Ave, between Kennard and Germain | |
| 5. PIN & LEGAL DESCRIPTION: 272922430051; J N Rogers 3rd Addition Lot 3 Blk 3 | |
| 6. PLANNING DISTRICT: 2 | |
| 7. ZONING CODE REFERENCE: §62.109(d) | PRESENT ZONING: R4 |
| 8. STAFF REPORT DATE: April 29, 2010 | BY: Luis Pereira |
| 9. DATE RECEIVED: April 22, 2010 | 60-DAY DEADLINE FOR ACTION: June 21, 2010 |
-

- A. **PURPOSE:** Re-establishment of nonconforming use as a duplex.
- B. **PARCEL SIZE:** 4,953 sq. ft., plus ½ 600 sq. ft. alley, 5,253 sq. ft. (approximately 0.121 acres)
- C. **EXISTING LAND USE:** Duplex
- D. **SURROUNDING LAND USE:**
North: Single Family Detached Home (R4)
East: Single Family Detached Home (R4)
South: Single Family Detached Home (R4)
West: Single Family Detached Home (R4)
- E. **ZONING CODE CITATION:** §62.109(d) lists the conditions under which the Planning Commission may grant a permit to re-establish a nonconforming use.
- F. **HISTORY/DISCUSSION:** DSI property records indicate that a 1995 Truth in Sale of Housing Report states the property was a duplex. Additional records through 2004 indicate the property remained a duplex, despite a series of citizen complaints about inadequate trash and snow removal, and poor exterior maintenance. The property is first listed as "condemned/vacant" on March 3, 2007, and DSI records identify an alleged water service shut-off following shortly thereafter. In August 2007, gas/electric utilities were shut off (per Xcel Energy), and on September 12, 2007, the property was formally put on the City's Registered Vacant Building List as a Category 3 duplex. At that time, the owner was listed as Bank of America. On November 17, 2009, one of the applicants (and at that point, a potential property owner) completed a Residential Use Affidavit stating that he would be converting the existing legal nonconforming duplex to a single family dwelling. By March 26, 2010, the property owner indicated a change of mind, and is now attempting to re-establish the legal nonconforming duplex.
- G. **DISTRICT COUNCIL RECOMMENDATION:** The District 2 Community Council had not taken a written position on this application at the time the staff report was composed.
- H. **FINDINGS:**
1. A Code Compliance Report was completed on August 31, 2009, addressed to Bank of America C/O Roxie. It recognized the property as a duplex, and identified numerous internal and external building repairs, as well as electrical, plumbing, and heating system work that must occur prior the property being sold or re-occupied. A letter addressed to the applicant and then-proposed buyer (Shinbay Yang) on November 20, 2009 (and accompanying DSI records) recommended the approval of the sale based on the applicant's compliance with several items, including: an issued Code Compliance Inspection Report; submitted cost estimates from licensed contractors for code compliance work; a submitted schedule for completion of code compliance work; and a signed Residential Use Affidavit submitted stating the applicant's intention to convert the property to a single family detached home.
 2. The applicant applied for building permits to convert the property to a single family dwelling on March 15, 2010, but subsequently withdrew the application by March 26, 2010, indicating a

Summary Information Sheet for Duplex/Triplex Conversion Cases submitted by the property owner, the gross living area is 2,228 square feet, or 1,114 square feet per unit.

C. Three off-street parking spaces (non-stacked) are preferred; two spaces are the required minimum. This guideline is not met. In order for the front paved driveway to be used in the future, a curb cut, curb, and gutter must be installed. However, if these required improvements are made, the front paved driveway (40' deep by 10' wide) only provides adequate space for one parking space (21' depth by 8' wide is required for parallel parking spaces). In addition, if the 40'-deep driveway is to be used for off-street parking, it must comply with §63.501 (Accessory buildings and uses), which prohibits off-street parking spaces within the front yard. The applicant would also either need to apply for and be approved for a parking variance to allow two less parking spaces than specified by this guideline, or the Planning Commission would need to find that the lack of two off-street parking spaces is an additional nonconforming item that is part of an approval of this NCUP. Alternatively, the applicant could remove the existing fence as well as at least one of two large trees along the rear property line, re-grade, and install a garage or parking pad that accesses the alley to meet the minimum requirement of two off-street parking spaces. It should be noted that there is adequate on-street parking on this block of Bush Avenue.

D. All remodeling work for the duplex is on the inside of the structure unless the plans for exterior changes are approved by the Board of Zoning Appeals as part of the variance. (The Planning Commission will approve these changes for the cases they handle.) This guideline is met. As stated above, the rehabilitation work required to use the property as a duplex involves numerous internal repairs (electrical, plumbing, and heating system work) as well as some external building work such as the repair/replacement of deteriorated windows and doors, the repair of siding, soffit, fascia, and trim, a re-leveling of the front porch, the replacement of rotting deck boards, joists, and blocking at the bottom of a side entry deck, the replacement of concrete steps that access the public sidewalk, and exterior painting. Consistent with this, the applicant identifies necessary internal work involving the appliances, cabinets, doors, electrical, flooring, heating, painting, plumbing, and external work involving the decking, driveway, landscaping, roofing, siding, and windows. While exterior work will occur, it is limited to basic Code-related repairs of deferred maintenance items and aesthetic improvements that will not alter the structure from its current size or general appearance. In addition, most of the identified external work would be required to be performed even if this property were to be converted back to a single family detached house.

E. For the purpose of protecting the welfare and safety of the occupants of any structure that has been converted into a duplex without the necessary permits, a code compliance inspection shall be conducted and the necessary permits obtained to bring the entire structure into conformance with building and fire code standards; or the property owner must, as a condition of the approval, make the necessary improvements to obtain the necessary permits and bring the entire structure into building and fire code compliance within the time specified in the resolution. This guideline is partially met (a Code Compliance Report has been issued), and can be completely met if the necessary repairs identified in the report are followed to continue its historical use as a duplex.

The application for the permit shall include the petition, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit. This finding is met.

- I. **STAFF RECOMMENDATION:** Based on finding #3C above, staff recommends denial of the re-establishment of nonconforming use as a duplex.